

ASSEMBLY BILL

No. 1052

Introduced by Assembly Member Cooley

February 26, 2015

An act to amend Sections 22203 and 22257 of the Education Code, and to amend Sections 20172 and 20190 of the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1052, as introduced, Cooley. Retirement board authority: investments.

The California Constitution grants the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system, as specified. The California Constitution also requires the retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, to have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

The Teachers' Retirement Law creates the State Teachers' Retirement System for the provision of service, disability, and other benefits to members. The law requires the assets of the plan, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Teachers' Retirement Fund, and continuously appropriates the fund for, among other things, the payment of member benefits. The Teachers' Retirement Law authorizes the board to appoint investment managers to manage the assets of the fund.

This bill would specify that the board is authorized to enter into agreements for the investment of the fund or appoint investment managers to manage the assets of the fund under the terms and utilizing the processes the board deems necessary and consistent with its fiduciary duties, as specified.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS) and the Public Employees' Retirement Plan for the provision of pension benefits to members. PERL requires the assets of the system, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Public Employees' Retirement Fund, a continuously appropriated fund. PERL grants the Board of Administration of PERS exclusive control of and fiduciary responsibility for the investment of the fund and authorizes the board to retain a bank or trust company to serve as a custodian for services in connection with the investment of the fund.

This bill would specify that the board of administration is authorized to enter into agreements with a bank or trust company for those services and to invest the assets of the fund under the terms, conditions, and processes the board deems necessary and consistent with its fiduciary duties and is not required to comply with any law or rule pertaining to state contracting to do so.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22203 of the Education Code is amended
2 to read:
3 22203. The board has exclusive control of the investment of
4 the Teachers' Retirement Fund. Except as otherwise restricted by
5 the California Constitution and by law, the board may in its
6 discretion invest the assets of the fund through the purchase,
7 holding, or sale thereof of any investment, financial instrument,
8 or financial transaction when the investment, financial instrument,
9 or financial transaction is prudent in the informed opinion of the
10 board. *Notwithstanding any other law, the board, in exercising its*
11 *discretion pursuant to this section, may enter into agreements,*
12 *contracts, or other arrangements solely under the terms,*

1 *conditions, and covenants and utilizing the processes the board*
2 *deems necessary and consistent with its fiduciary duties.*

3 SEC. 2. Section 22257 of the Education Code is amended to
4 read:

5 22257. (a) Notwithstanding ~~Section 22203~~, *any other law*, the
6 board may contract with or appoint one or more investment
7 managers to manage the assets of the retirement ~~fund~~. *fund under*
8 *the terms, conditions, and covenants and utilizing the processes*
9 *the board deems necessary and consistent with its fiduciary duties.*

10 If the board has acted with care, skill, prudence, and diligence in
11 meeting the requirements of Sections 22252 and 22253 in selecting
12 and monitoring the investment managers, then, notwithstanding
13 Sections 22250, 22252, 22253, 22254, and 22256, no board
14 member shall be liable for the acts or omissions of the investment
15 managers or be under any obligation to invest or otherwise manage
16 any assets of the retirement fund that are subject to the management
17 of the investment managers.

18 (b) Incorporation of the fiduciary duty set forth in Section 22250
19 into the terms of a contract between the system and an investment
20 manager shall be admissible as evidence that the board has acted
21 with care, skill, prudence, and diligence in the selection of the
22 investment manager.

23 SEC. 3. Section 20172 of the Government Code is amended
24 to read:

25 20172. Notwithstanding any other ~~provision of~~ law, the board
26 may retain a bank or trust company to serve as custodian for
27 safekeeping, delivery, securities valuation, investment performance
28 reporting, and other services in connection with investment of the
29 retirement fund. *The board, without compliance with any law, rule,*
30 *provision, or procedure pertaining to state contracting, may enter*
31 *into agreements, contracts, or other arrangements with a bank or*
32 *trust company for custodian and custodian-related services under*
33 *the terms, conditions, and processes the board deems necessary*
34 *and consistent with its fiduciary duties.* Notwithstanding Section
35 13340, all moneys in the fund are continuously appropriated,
36 without regard to fiscal years, for payments which shall be made
37 upon warrants drawn by the Controller upon demands made by
38 the board. Upon demand of the board, warrants shall be drawn for
39 the purpose of making payments by electronic fund transfers.

1 SEC. 4. Section 20190 of the Government Code is amended
2 to read:
3 20190. The board has exclusive control of the investment of
4 the retirement fund. Except as otherwise restricted by the California
5 Constitution and by law, the board may, in its discretion, invest
6 the assets of the fund through the purchase, holding, or sale thereof
7 of any investment, financial instrument, or financial transaction
8 when the investment, financial instrument, or financial transaction
9 is prudent in the informed opinion of the board. *In exercising its*
10 *discretion pursuant to this section, the board, without compliance*
11 *with any law, rule, provision, or procedure pertaining to state*
12 *contracting, may enter into agreements, contracts, or other*
13 *arrangements with a bank or trust company for custodian and*
14 *custodian-related services under the terms, conditions, and*
15 *processes the board deems necessary and consistent with its*
16 *fiduciary duties.*